

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K.H., et al.,

Persons Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALEXIS H.,

Defendant and Appellant.

B291863

(Los Angeles
County
Super. Ct. No.
DK18412)

APPEAL from an order of the Superior Court of Los Angeles County, Pete R. Navarro, Juvenile Court Referee. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Peter Ferrera, Principal Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother, Alexis H. appeals from an order denying the maternal great aunt's Welfare and Institutions Code section 388¹ petition requesting placement of Mother's two children, and a subsequent order terminating Mother's parental rights under section 366.26. She contends the juvenile court abused its discretion by declining to place the children with the maternal great aunt and uncle in a permanent relative guardianship, which she contends could have made termination of her parental rights unnecessary. She further contends the juvenile court erred in determining the parental relationship exception to termination of parental rights did not apply. We affirm both orders.

FACTUAL AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the record in the light most favorable to the juvenile's court's decision, drawing all reasonable inferences from the facts in support of the court's ruling. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

This case concerns Mother's two children, Kayden H. (born December 2012) and K.H. (born June 2015). In July 2016, the Department of Children and Family Services (the Department) started an investigation after receiving a report that Mother and children were brought to the hospital emergency room after a car

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

accident. Kayden was not in a car seat at the time of the accident and sustained multiple fractures around his right eye. Mother ignored Kayden, did not comfort him, and refused to allow the doctors and hospital staff to evaluate him. Mother was placed on a psychiatric hold pursuant to section 5150.

The Department filed a dependency petition on the children's behalf, alleging they were at risk of serious physical harm because Mother physically abused Kayden, had mental and emotional problems, and drove the children into a tree. The juvenile court removed the children from Mother after concluding substantial danger existed to the physical or emotional health of the children.² The children were placed together in the same foster home.

The juvenile court sustained an amended version of the petition. The Department reported Mother had not had any monitored visitation with the children. The children were then placed into a second home with foster parents who were willing to monitor Mother's visits. Although attempts were made to schedule Mother's visits, they were unsuccessful due to Mother's belligerent and argumentative behavior.

The second foster parents asked that the children be replaced from their home due to the children's needs and the difficulty in working with Mother for calls and visits. On December 28, 2016, the children were placed in a third foster home.

² The children were initially released to Father, but the juvenile court subsequently detained them from Father after it learned he was in violation of his parole conditions and a warrant had been issued for his arrest. Father is not a party to this appeal.

In January 2017, the juvenile court removed the children from parents' custody and ordered family reunification services. The juvenile court ordered Mother to visit the children a minimum of twice a week for two hours, participate in psychiatric services, individual counseling, and parenting instruction and to take all prescribed medication.

I. Termination of Reunification Services

Between January and June 2017, Mother's visitation was highly inconsistent. Mother was ordered to attend two visits a week but had been visiting once every other week and rarely called at the scheduled times. Mother stopped attending individual therapy because she felt her therapist had made an offensive comment towards her. Mother also reported that she was not participating in any mental health counseling. Mother continued to miss scheduled visits in July, August, and September. Thus, the juvenile court found Mother's progress minimal and terminated family reunification services. It set the matter for a section 366.26 hearing to select and implement a permanent plan for the children.

II. Maternal Great Aunt's Section 388 Petition

On October 10, 2017, the children's maternal great aunt filed a petition pursuant to section 388 asking that she and the maternal great uncle be granted permanent placement of the children. The juvenile court set a hearing on the section 388 petition and authorized monitored visits.

The maternal great aunt and uncle had three visits between December 2017 and January 2018. The children appeared comfortable during the visits and called the relatives "Aunt" and "Uncle." However, the social worker reported the visits "appeared to be more superficial" because she did not observe any significant connections or attachment to the maternal great aunt and uncle.

By January 2018, the children had been living with their foster parents for over a year. The children developed a secure and appropriate attachment to the foster parents, who were committed to adopting the children. The children referred to the foster parents as “Mommy” and “Daddy.” The Department further reported Kayden’s behavioral issues had improved significantly since being placed in the third foster home.

The maternal great aunt and uncle continued to have weekly visits in February and March. The visits were generally going well. However, the foster mother reported Kayden appeared to have concerns regarding the purpose of the visits, asking the maternal great uncle, “are you going to take me from my mommy and daddy [foster parents]?” Kayden also told his foster mother he did “not want to go to visits.” The foster parents further reported that Kayden wet himself at one visit, which they feared was triggered by anxiety.

In May 2018, the court held a hearing on the section 388 petition. The maternal great aunt testified she became aware of this dependency matter in August 2016 and contacted an “emergency social worker” about placement, who promised to pass her contact information on to the permanent social worker. She did not hear back from the social worker and did not attempt to contact the social worker again because Mother told her she was “going to take care of it.” She further testified she eventually contacted the social worker in September 2017 because she was concerned Mother was showing “signs of having manic episodes” and she wanted to remain in the children’s lives. The social worker told her it was too late to do anything as a relative because the children would be adopted in a few months. The Department reported neither the emergency response social worker nor the social worker had received messages from the maternal great aunt. Visits with the children started once a week in December 2017. She testified she was asking the juvenile

court to initially place the children with her under legal guardianship “because [Mother] [was] getting herself together,” but “if adoption comes up, we’re not objected [sic] to it.”

The foster father testified Kayden had to work with a psychiatrist for emotional trauma when the children were first placed in his home. However, a year and a half later, Kayden stopped throwing tantrums, understood being told “no,” and was respectful to adults. He further testified the children did not object when they visited the maternal great aunt and uncle because they saw it as playtime. On occasion, they wanted to stay and play, but as soon as they got in the car with the foster father, they were ready to go. He noted that for the previous month, the mother and maternal relatives visited at the same time, but from January 2018 until the beginning of May 2018, Mother did not visit the children. He said he loved the children, wanted to adopt them, felt like they were his children already, and the children routinely attended family gatherings.

On June 11, 2018, the juvenile court denied the maternal great aunt’s section 388 petition, noting the children’s “incredible improvement” and “stabilization” in the foster parents’ home. It found that it was not “in the best interest of the children to be removed from their current foster home” because it would be “detrimental, after having been bounced around early on from two different foster homes, finally being stabilized, for them to be removed a fourth time.” The juvenile court continued the matter for a contested section 366.26 hearing.

III. Termination of Parental Rights

The juvenile court held a contested section 366.26 hearing. The Department and children’s counsel asked the court to terminate parental rights with respect to both children. Mother argued the beneficial parent-child relationship exception applied and offered

testimony in support of the contention, including testimony regarding her visits and relationship with her children. The court could not find a “factual basis to support that the contacts that Mother has had with her children rise to the level of occupying the parental role” and concluded the exception did not apply, the children were adoptable, and it would be detrimental to the children to be returned to the parents. Thus, the court terminated parental rights and released the children for adoption.

DISCUSSION

I. Section 388 Petition

A. Appealability

Mother appealed the termination of her parental rights without mentioning the denial of the maternal great aunt’s section 388 request for placement of the children. While a notice of appeal generally will not be considered adequate if it completely omits any reference to an order being appealed (*In re Josiah S.* (2002) 102 Cal.App.4th 403, 418), we will liberally construe a notice of appeal to include an omitted order when the appeal would be timely as to that order. (*In re Madison W.* (2006) 141 Cal.App.4th 1447 [liberally construing a parent’s notice of appeal from an order terminating parental rights to encompass the earlier denial of the parent’s section 388 petition where the notice of appeal was filed within 60 days of the denial].)

Here, Mother filed the notice of appeal within 60 days of June 11, 2018, when the juvenile court denied the maternal great aunt’s section 388 request for placement of the children. The Department addressed the section 388 petition in its brief, and is not prejudiced by a liberal construction of the notice of appeal. Accordingly, we construe the notice of appeal as being from both

the termination of parental rights order and the June 11, 2018 order.

**B. The Juvenile Court Did Not Abuse Its Discretion
By Denying Placement With Maternal Great Aunt
and Uncle**

Mother contends the juvenile court erred in denying placement of the children with the maternal great aunt and uncle at the May 2018 section 388 hearing. We disagree.

We first address the threshold question whether Mother has standing to challenge relative placement. “A parent’s appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child’s placement only if the placement order’s reversal advances the parent’s argument against terminating parental rights.” (*In re K.C.* (2011) 52 Cal.4th 231, 237-238.) “[A] parent generally does not have standing to raise placement issues on appeal where the parent’s reunification services have been terminated. This is because decisions concerning placement of the child do not affect the parent’s interest in reunification when the parent is no longer able to reunify with the child.” (*In re J.Y.* (2018) 30 Cal.App.5th 712, 717.)

Although reunification services were terminated by the time of the section 388 petition, Mother argues placement with the maternal great aunt and uncle could have made termination of parental rights unnecessary pursuant to the relative caretaker exception to adoption. The relative caregiver exception states the juvenile court need not terminate parental rights when “[t]he child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an

unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child.” (§ 366.26, subd. (c)(1)(A).) Mother speculates if the children had been placed with the maternal great aunt and uncle in May 2018, just two months later at the section 366.26 hearing in July 2018, she could demonstrate removal from the relatives would be “detrimental to the emotional well-being” of the children. (§ 366.26, subd. (c)(1)(A).) Mother’s conjecture would not advance her argument against terminating parental rights. (See *In re A.K.* (2017) 12 Cal.App.5th 492, 499-500 [holding placement with a relative immediately before a section 366.26 hearing would not advance father’s argument that the relative caretaker exception applied because the minor would not have been living with the relative for a sufficient length of time to develop a relationship].)

In any event, we reject Mother’s contention on the merits. “A juvenile court’s placement orders are reviewed under the abuse of discretion standard; the court is given wide discretion and its determination will not be disturbed absent a manifest showing of abuse.” (*In re Sabrina H.*, 149 Cal.App.4th 1403, 1420.) Here, evidence in the record demonstrates the children had a strong bond with their prospective adoptive parents, who they lived with for over a year. The children referred to the foster parents as “Mommy” and “Daddy,” routinely accompanied them to family gatherings, and Kayden’s behavioral issues had improved significantly. Accordingly, the juvenile court did not err in finding “it would be detrimental, after having been bounced

around early on from two different foster homes, finally being stabilized, for [the children] to be removed a fourth time.”

Nor did the juvenile court err in failing to apply the relative placement preference set out in section 361.3. The statutory preference for placement with relatives applies when (1) a child is taken from her parents and placed outside the home pending the determination whether reunification is possible and (2) when the placement is made after the dispositional hearing, even when reunification efforts are no longer ongoing, whenever a child must be moved. (*In re A.K.*, *supra*, 12 Cal.App.5th at 498.) It does “not apply to an adoptive placement; there is no relative placement preference for adoption.” (*Ibid.*) Here, by the time of the section 388 hearing, reunification services were terminated and the foster parents were committed to adopting the children. Indeed, the Department has no record of the maternal great aunt coming forward and expressing interest in being a caregiver before the children were placed in the third foster home. Accordingly, the relative placement preference did not apply and the juvenile court properly exercised its discretion in denying the 388 petition.

II. Termination of Parental Rights

Mother contends the juvenile court erroneously denied application of the parental relationship exception to termination of her parental rights. We disagree.

A. Legal Principles and Standard of Review

In reviewing challenges to a court’s decision to deny application of a statutory exception to adoption, we employ the substantial evidence or abuse of discretion standard, depending on the nature of the challenge. (*In re K.P.* (2012) 203 Cal.App.4th

614, 621-622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*.) For factual determinations, such as whether a parent has shown consistent visitation and the existence of a parental relationship, we apply a substantial evidence standard of review. (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) Once the court finds adequate evidence of a parental relationship, it must determine whether termination of parental rights would be detrimental to the child as weighed against the benefits of adoption. (See *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300; *In re Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*.) Because the second determination requires the court to exercise its discretion, we apply an abuse of discretion standard of review. (*In re K.P.*, *supra*, at p. 622; *Bailey J.*, *supra*, at p. 1315.) “In the dependency context, both standards call for a high degree of appellate court deference.” (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.)

“By the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and the child’s interest in a stable and permanent placement is paramount.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) Under section 366.26, subdivision (c)(1), if the court finds by clear and convincing evidence it is likely the dependent child will be adopted, “the court shall terminate parental rights and order the child placed for adoption.” The parental relationship exception under section 366.26, subdivision (c)(1)(B)(i) applies only if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

In analyzing whether a parent has met his or her burden to show application of the parent-child relationship exception, the

dependency court considers two prongs. The first prong examines the quantitative question of how consistently a parent has maintained visitation with the child. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) “[T]he second prong involves a qualitative, more nuanced analysis, and cannot be assessed by merely looking at whether an event, i.e. visitation, occurred. Rather, the second prong requires a parent to prove that the bond between the parent and child is sufficiently strong that the child would suffer detriment from its termination.” (*Id.* at p. 613.)

“To avoid termination of parental rights, it is not enough to show that a parent-child bond exists.” (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1200.) The parent asserting the parental relationship exception will not meet his or her burden by showing the existence of a “friendly and loving relationship,” or pleasant, loving, and even frequent, visits. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption.” (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*)). Furthermore, evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. Mother also must show she occupies a parental role in the child’s life. (*Breanna S., supra*, at p. 646; *In re G.B.*, (2014) 227 Cal.App.4th 1147, 1165.) “A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) Instead, a juvenile court must find that

the parent-child relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

B. The Juvenile Court Did Not Err By Declining to Apply the Parental Relationship Exception

The juvenile court found Mother “has not established a bond with the child[ren].” Indeed, Mother conceded she did not consistently maintain visitation with the children. Although Mother provided a litany of reasons for the infrequency of visits (i.e. her mother’s death in 2016, caring for her ill grandmother, recuperating physically from the car accident, and her “executive depression” diagnosis), even legitimate excuses for failing to regularly visit are not relevant to prove the exception under section 366.26, subdivision (c)(1)(A). (*See Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1147-1148 [excuses for failure to visit are not relevant to prove that removing children from placement and returning them to parent is in children’s best interest].)

Even if Mother presented sufficient evidence of regular and consistent visitation, the juvenile court did not err in determining

termination of parental rights would not be detrimental to the children as weighed against the benefits of adoption. The children were placed in two foster homes before being placed with the prospective adoptive parents, who provided the children with a loving, nurturing, and structured home for over a year and a half. As noted above, Mother's visitation was sporadic and inconsistent. When she did visit, she played with Kayden and gave Kayden her phone to watch videos or play video games. Mother and K. pretended to take naps together, pretended to cook, read together, and Mother did K.'s hair. These playtime visits are insufficient to overcome the statutory preference for adoption. (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 529.) Thus, the juvenile court was justified in concluding that stability and permanence in a home in which the children were doing well, after being bounced around from two other foster homes with very little visitation from Mother, was of paramount importance to the children's well-being.

DISPOSITION

The order denying the maternal great aunt and uncle's section 388 petition, as well as the order terminating parental rights, are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURREY, J.

WE CONCUR:

MANELLA, P. J.

WILLHITE, J.